



Environmental Management Consolidated Business Center (EMCBC)

**Subject: Handling Foreign Ownership, Control, or Influence (FOCI)
Submission**

POLICY, PROCEDURE
And PLAN

APPROVED: (Signature on File)
EMCBC Director

1.0 PURPOSE

The purpose of this procedure is to establish the responsibilities for identifying and handling foreign ownership, control, or influence (FOCI) at the prime and subcontract level.

2.0 SCOPE

The scope of this procedure is to ensure that entities under foreign ownership, control or influence are not given access to classified information or special nuclear material when such access may result in the compromise of U.S. national security interests.

3.0 APPLICABILITY

All EMCBC personnel shall comply with this procedure.

4.0 REQUIREMENTS

4.1 10 Code of Federal Regulations (CFR) Part 710, Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

4.2 Department of Energy (DOE) Manual 470.4-1, Chg 1, Safeguards and Security Program Planning and Management

4.3 DOE Manual 470.4-1, Chg 1, Safeguards and Security Program Planning and Management, Section H, Appendix 6 – FOCI Matrix Chart

4.4 DOE Order 470.4, Safeguards and Security Program

4.5 DOE Acquisition Regulation (DEAR) 904.7003, Foreign Ownership, Control, or Influence Over Contractors

5.0 DEFINITIONS – NOT APPLICABLE

6.0 RESPONSIBILITIES

6.1 Contract Specialist (CS)/Contracting Officer (CO):

- 6.1.1 When contemplating an award which requires a FOCI certification, or in the instance where an existing contractor will gain access requiring a FOCI certification, and where the potential awardee or contractor is an organization not possessing a current affirmative FOCI clearance determination, the CS/CO shall be responsible for providing the offeror/bidder/contractor/subcontractor (hereafter called the offeror”) with current guidelines for completing the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests (Attachment A), a list of sensitive foreign nations, and a format for listing the organization’s officers and directors.
- 6.1.2 Insert the SF 328 in all solicitations in which contract performance requires personnel security clearances.
- 6.1.3 Forward all FOCI certifications to the DOE Cognizant Security Authority (CSA) at the time the competitive range for an acquisition is determined. This allows sufficient time to process any and all submitted FOCI certifications.
- 6.1.4 Obtain a favorable FOCI determination under a contract/subcontract subject to FOCI. Until a favorable FOCI determination is rendered, the CO is prohibited from awarding, extending, or modifying a contract, or exercising any options.
- 6.1.5 Document the results of an offeror’s FOCI certification in the official contract file by including it in the Price Negotiation Memorandum (PNM).

6.2 DOE CSA – is responsible for reviewing the FOCI information submitted by the EMCBC Office of Contracting (OOC).

7.0 GENERAL INFORMATION – NOT APPLICABLE

8.0 PROCEDURE

8.1 CS/CO Review of the FOCI Submission

- 8.1.1 Prior to submitting a completed FOCI package to the DOE CSA, the CS/CO shall review the submission to ensure that:
 - 8.1.1.1 The certificate has been signed and dated by an authorized official of the offeror;
 - 8.1.1.2 The offeror’s most recent annual report and its Securities and Exchange Commission 10K report have been attached;

- 8.1.1.3 A list of the names of Key Management Personnel with their respective nationality has been attached;
- 8.1.1.4 A consolidated financial information report has been attached, if the offeror is a privately-owned company;
- 8.1.1.5 A parent organization FOCI package has been attached, if the offeror indicated it was owned by a parent organization. (Note: All tier levels of the parent organizations must provide the same information as the offeror.);
- 8.1.1.6 If any of these documents are missing, the CS/CO will advise the offeror that award cannot be made until all documents are furnished, and request that the offeror provide any missing data;
- 8.1.1.7 If the CSA determines that a FOCI situation exists, the CS/CO shall request that the offeror submit a plan of action to avoid or mitigate the FOCI issue.

8.2 CSA Action Plan

- 8.2.1 Based upon the EMCBC OOC's review of the FOCI information, the CSA shall initiate the following actions:
 - 8.2.1.1 Determine the degree and extent of FOCI over the offeror or subcontractor;
 - 8.2.1.2 Prepare a written response to the EMCBC OOC, providing the rationale for the determination and stating that there should/should not be restrictions made on the offeror which will be included in the official contract file.
 - 8.2.1.3 In the case of a determination that there should be restrictions, the CSA will review the offeror's plan of action and determine its acceptability. If acceptable, the plan of action shall be made part of the contract requirements. If unacceptable, the CSA will recommend that the offeror not be considered for contract award, and/or that affected contracts with a contractor be terminated.

9.0 RECORDS MAINTENANCE

- 9.1 IP-540-04-F1, Standard Form (SF) 328, "Certificate Pertaining to Foreign Interest"

10.0 FORMS USED

10.1 Forms used shall be the latest revision unless otherwise stated.

10.1.1 Standard Form (SF) 328, “Certificate Pertaining to Foreign Interest”

11.0 ATTACHMENT

11.1 Attachment A –Standard Form (SF) 328, “Certificate Pertaining to Foreign Interest”

EMCBC RECORD OF REVISION**DOCUMENT**

If there are changes to the controlled document, the revision number increases by one. Indicate changes by one of the following:

- I Placing a vertical black line in the margin adjacent to sentence or paragraph that was revised.
- I Placing the words GENERAL REVISION at the beginning of the text.

Rev. No.	Description of Changes	Revision on Pages	Date
1	Original Issue	All	06/26/06